IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 23258 of 2006(R)

PETITIONER:

S.CHANDRAN ALIAS MANICHAN,
TODDY CONTRACTOR, PATTARUMADOM HOUSE,
CHIRAYINKIL, TRIVANDRUM (NOW UNDERGOING
IMPRISONMENT AT CENTRAL PRISON, TRIVANDRUM).

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON
ADV. SHRI.P.VISWAMBHARAN

RESPONDENTS:

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1. INTELLIGENCE OFFICER (INVESTIGATION
BRANCH) COMMERCIAL TAXES, TRIVANDRUM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
KERALA AT TRIVANDRUM.

3. STATE OF KERALA REPRESETNED BY SECRETARY
TAXES DEPARTMENT, GOVT.SECRETARIAT,
TRIVANDRUM.

*4. THE TAHSILDAR, CHIRAINKEEZHU,
THIRUVANANTHAPURAM DISTRICT.

(*IMPLEADED AS ADDITIONAL 4TH RESPONDENT AS PER ORDER DATED 02/05/2007 IN I.A. NO. 6057/2007.)

BY ADV. SHRI.V.TEKCHAND, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 23258/2006

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PENALTY ORDER DATED 21/10/2002 PASSED BY THE FIRST RESPONDENT.

P2 : COPY OF THE ORDER DATED 10/09/2004 PASSED BY THE DY.COMMISSIONER, COMMERCIAL TAXES, QUILON.

P3 : COPY OF THE ORDER DATED 07/04/2006 PASSED BY THE SECOND RESPONDENT AGAINST THE PETITIONER.

P4 : COPY OF the LETTER ADDRESSED TO THE INTELLIGENCE OFFICER, THIRUVANANTHAPURAM.

P5 : COPY OF NOTICE TO THE PETITIONER DATED NIL.

P6 : COPY OF AUCTION NOTICE NO. G 10.7157/03 ISSUED BY TAHSILDAR, CHIRAINKEEZHU TALUK.

RESPONDENT'S EXHIBITS

R1(a) : COPY OF NOTICE UNDER SECTION 46 & 45A OF THE KGST ACT 1963 DATED 23/02/2001.

R1(b) : COPY OF NOTICE DATED 01/07/2001 BY 1ST RESPONDENT ALLOWING TIME.

R1(c) : COPY OF VAKALATHNAMA DATED 17/07/2001.

// TRUE COPY //

PA TO JUDGE.

jg

THOTTATHIL B. RADHAKRISHNAN, J.

WP(C) No. 23258 of 2006

&

I.A.No. 14404 of 2007 in WP(C) No. 23258/2006

Dated, this the 30th day of October, 2007

J U D G M E N T

After admission of this writ petition on 29/08/2006, an interim order was issued on I.A. No. 6058/2007 on 02/05/2007 granting stay of proceedings initiated under the Revenue Recovery Act, as a consequence of the penalty orders. In that order, stay was conditional on deposit of Rs. 10 lakhs within one month from the date of that order. The admitted situation is that no deposit was made pursuant to that order. As a consequence, revenue recovery proceedings were carried on, and as on today, that matter is listed for sale of an item of immovable property. It is under such circumstances that I.A.No. 14404/2007 is filed seeking stay of the sale.

2. Having regard to the fact that the petitioner had not even complied with the condition imposed as per the order dated 02/05/2007 on I.A.No. 6058/2007, which was only to deposit an amount of Rs. 10 lakhs as against the penalty amount, which comes

to around Rs. 8 crores, I am not inclined to issue any order deferring sale proceedings on the ground of the pendency of this writ petition. It is also stated by the petitioner that he is unable to raise that amount. It is stated that on account of certain offences under the Abkari Act and the Indian Penal Code, the petitioner and others have been convicted by the competent criminal court and the petitioner is suffering sentence in the Central Prison. It is further pointed out that as of now, his daughter is in the midst of certain proceedings before the Family Court and that the petitioner's wife and daughter are solely depending on whatever little that the petitioner is able to send home out of earning by his hard labour in the jail. Those reasons, by themselves, do not impress, having regard to the facts and circumstances of the case.

3. In view of the above, on consent I heard the learned counsel for the petitioner and the learned Government Pleader on the merits of the writ petition. This writ petition is thus being considered on merits finally.

4. On 14/10/1999, the Income Tax Authorities searched

the offices of the petitioner, an abkari contractor, and offices of a firm, 'Ushus Traders', stated to be owned by the petitioner and his wife. The Income Tax Authorities recovered the books of accounts and other records evidencing business transactions for the years 1998-1999 and 1999-2000. The records seized by the Income Tax Authorities were enumerated and forwarded to the Intelligence Branch of Commercial Tax Department under Section 138 of the Income Tax Act. Those documents included stock statements, daily accounts, diaries and different statements and the sworn statement of Shri. Balachandran, the Manager of the writ petitioner, tendered before the Income Tax Authorities on 16/11/1999 & 22/11/1999. The documents thus forwarded are enumerated in Ext.P1.

5. Based on those 25 pieces of materials, notices were issued for imposition of penalty under Section 45A of the KGST Act, 1963 alleging infraction of the provisions under Section 13 & 27 of the Act. Exts.R1(a) & R1(b) evidence that though the petitioner was in jail at that point of time, he was served with notice relating to the proceedings. He was also offered an opportunity to compound the offence departmentally, under Section 47 of the Act

in lieu of prosecution. He did not avail that. On his behalf, Adv. Shri.K.C.Gopalan filed a reply requesting time to verify records and for filing detailed explanation. Accordingly, vide office notice dated 01/07/2001, opportunity was given to take extracts which are needed, and to file objections, if any. That opportunity was also not availed. Adv. Shri.P.Viswambharan filed vakalatnama on 06/08/2001 and a petition, on 08/08/2001, requesting permission to peruse the entire documents and to take extracts. Permission was granted, according to the respondents, going by Ext.P1, "on the spot", to peruse documents on any working day before 29/08/2001. That too was also not utilized. It is stated in Ext.P1 that taking into consideration the peculiar situation of the case, three more opportunities were given in terms of office letters dated 11/12/2001, 20/03/2002 and 22/06/2002. No reply was filed. However, on 09/07/2002, Adv. Shri.Viswambharan filed a statement stating that attempts to contact the petitioner in person was not fruitful. The petitioner's non-availability was attributed to the pending criminal cases, which by that time were reserved for judgment. Two months' time was sought for. That request was also granted. After that period expired on 10/09/2002, without

being availed, the proceedings were dealt with by treating that all the explanations raised are liable to be summarily rejected because the irregularities have been established and it is unnecessary to further drag on the matter. The Intelligence Officer also concluded in Ext.P1 that it was unnecessary to make any further detailed examination or afford an opportunity for cross-examination, because the sworn statement of Shri.Balachandran, the Manager of the petitioner was given before the Income Tax Authorities and those statements were used only to corroborate the books, statements, diaries etc. which have been unearthed by the Income Tax Department. Ext.P1 penalty order was thus issued giving vivid calculations as to the manner in which the amounts have been arrived, imposing double the amount of escaped tax as penalty. That penalty order has been affirmed in revisions by the higher authorities.

6. The primary contention, or rather the only one, that was seriously canvassed on behalf of the petitioner is that there was negation of natural justice, in as much as, the petitioner who had been in police custody or undergoing sentence was not given

appropriate opportunity to defend the penalty proceedings.

7. The vivid sequence of the events, which have been noticed above, would show that every request made on behalf of the petitioner for adjournment, was granted. He was represented by the counsel. It is the learned counsel who last appeared for the petitioner before the Intelligence Officer, who appeared for him even in the second revision. The search and seizure were not by the Department of Commercial Taxes. It was by the Income Tax Authorities. The undisputed statement in Exts.P1, P2 & P3 is that the petitioner had settled his income tax cases. All that the Commercial Taxes Department has done is to rely on materials seized by the Income Tax Authorities and made available to the Commercial Taxes Department, under Section 138 of the Income Tax Act. Not only that, the second revisional authority has also noticed that the contention of the petitioner in the second revision, that all the parties are liable and that the petitioner cannot be isolated to suffer all the dues, is sufficient to hold that Sections 13 & 27 of the KGST Act have been violated. On the basis of the opportunities extended to the petitioner as noticed above, and in

view of Explanation I to Section 45A, as to the burden of proof, the concurrent decisions of the revisional authorities affirming the penalty order are not vitiated by any jurisdictional error or legal infirmity.

8. On to the question of quantum of penalty, the nature of the transactions which have been unearthed and relied on are not only shady, but transactions which are prohibited by law, including offence of dealings under the abkari laws. The nature of the transactions and nature of business which have been unearthed do not persuade me to conclude that the penalty imposed on the petitioner as per the impugned orders, which is the maximum permissible in law is, in any manner, exorbitant and needs to be trimmed down.

In the result the writ petition fails and the same is accordingly dismissed. No costs.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

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